COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 846 of 2001
(Old No.600/1999)

United India Insurance Company Ltd. … **Appellants.**

Versus

Mani Ram Bahuguna and another. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 ***(in short the Act)*** against the judgment and Award, dated 31-3-1999, passed in Case No. W.C.A. 5 of 1987, Mani Ram Bahuguna Vs. Sri Anil Bhatt and another, by the Workmen's Compensation Commissioner & Asstt. Labour Commissioner Garhwal Region, Rishikesh **(*hereinafter referred to as the Commissioner*),** whereby the learned Commissioner has awarded a sum of Rs. 2,39,280/- in favour of the claimant-respondent no. 1 with certain directions, as against the Opposite Party No. 2-appellant. Aggrieved, the Insurance Company-appellant has come up in appeal with a prayer to set aside the impugned judgment and award and has assailed the impugned judgment and award contending that the judgment and award is not based on evidence on record and is illegal as disability has been assessed to be 100%.

Brief facts of the case that the claimant Mani Ram Bahuguna presented a petition under the Act for compensation before the learned Commissioner on 17.1.1997 alleging therein that he was in the employment of the O.P.-respondent no.2 as driver of his bus No. USQ-754. On 3-7-96 in the course of his employment, the claimant was driving the bus from Rishikesh to Gangotri. When the bus reached near Tachhala, village Fakot in Tehri

Garhwal, due to failure of brakes, the accident in question had taken place with the result the bus fell down in ***Khadd***, thereby causing grievous injuries on the person of the claimant. Two bones of left leg were fractured. The injured claimant was a skilled driver and due to said injuries, he has become disabled for the work of driver in future. He was aged 35 years at the time of accident and was getting Rs. 3000/- per month as salary. The bus was duly insured with the O.P. No.2-appellant. Despite his request, the opposite parties have not paid any compensation. It has also been alleged that the claimant has become 100% permanent disabled to work as driver, therefore, the claim petition has been filed for compensation of Rs. 3,54,708/- against the Opposite Parties along with interest.

The case was registered. The O.P.No.-1, employer, has filed is written statement. He has admitted all the allegations made in the petition except that the injured claimant was getting Rs. 3000/- p.m. as salary. He has pleaded that the claimant-respondent was being paid Rs. 2000/- in all as salary per month. He has also pleaded that the bus in question was insured with the appellant Insurance Company and information of accident was given to Insurance Company. It is also pleaded that the liability of compensation, if any, rests on the appellant-O.P. No.2. Insurance Company contested the case and filed written statement. It has been admitted that the vehicle in question was duly insured with it. Rest of the allegations have been denied and it has been pleaded that the claimant should prove the allegations supported by evidence. It has also pleaded its limited liability to pay compensation to the claimant.

On the pleadings of the parties, the learned Commissioner has framed as many as four Issues. Issue No.1 related to relief. Issue No.2 related to plying of vehicle on the basis of valid documents. Issue No. 3 related to the income of the injured-claimant and Issue No.4 related to age of the injured-

claimant. The claimant filed documentary evidence and has examined himself on oath. He has stated among other things that he was getting Rs. 2000/- per month in addition to Rs. 50/- as daily allowance by his employer. The accident had taken place in the course of his employment with the result he sustained injuries on different part of body and two bones below the left knee were got fractured thereby he has become permanent disabled for the work of driver due to accident. He got treatment for his injuries in Government Hospital, Rishikesh and has proved the medical certificate, etc. This witness has also proved his driving licence. The Opposite Parties have not adduced any oral or documentary evidence despite sufficient opportunity given to them.

The learned Commissioner after hearing both the parties and considering the evidence, on record, found on Issue No.1 that the accident in question had taken place in the course of employment of the claimant. Learned Commissioner has ultimately held that although the disability has been assessed at 30% by the Chief Medical Officer, but as the injured was engaged in the job of driver, therefore, his left leg has turned disabled thereby the claimant is now unfit for the work of driver. Considering the verdict of the Apex Court, the learned Commissioner has held that claimant being skilled driver has sustained permanent disability for his job. The learned Commissioner has taken the salary of the injured as Rs. 2000/- per month for the purposes of compensation and has also held that since the vehicle in question was duly insured with O.P. No.2-appellant, the liability to pay compensation was fastened on the appellant. Prayer of interest has been turned down by the learned Commissioner. As regards determination of age, the learned Commissioner has relied on the testimony of the claimant that he was born in the year 1962. The age of the injured has also not been disputed by the opposite parties. Accordingly, the compensation amount has been determined as Rs. 2,39,280/-. On Issue No.2, the learned Commissioner has declined to accept the contention of the O.P.No.2-appellant for want of evidence that the

driver/owner of the vehicle were not possession valid papers. Driving Licence filed on record led the learned Commissioner to hold that driver-injured was having valid driving licence on the date of accident. On Issue Nos. 3 and 4, the learned Commissioner has held that from the findings on Issue No.1, the points in controversy have been disposed of. Ultimately, the learned Commissioner has awarded compensation to the claimant-respondent no.1 as mentioned above.

We have heard the learned counsel for the appellant, Mr. K.K.Shah, as well as learned counsel for the respondent, Mr. S.N.Babulkar and have carefully gone through the entire material before us as well as the impugned judgment and award.

It has been submitted before us that the age of the claimant-respondent was 35 years and the learned Commissioner has held the same as 34 years, therefore, the order under appeal is not sustainable. This argument of the learned counsel has no force for the simple reason that he has failed to point out as to how any prejudice has been caused to the appellant on that count. The learned Commissioner has relied the testimony of the injured-claimant who had appeared in the witness box. The appellant had opportunity to establish otherwise on record, but nothing has been done on behalf of the appellant. Moreover, in our opinion, no prejudice has been caused by holding the age as 34 years, instead of 35 years. The compensation amount has not been assessed solely on the basis of age. This contention is not at all acceptable.

The other point raised before us that the learned Commissioner has taken the disability as 100%, whereas the Medical Certificate certified it at 30%. The contention of the appellant is also devoid of any merit. It has been proved on record that the claimant-respondent was employed as driver and his left leg has become totally unfit to allow him to work as driver in future. The learned Commissioner has elaborately discussed the

verdict of the Apex Court in his judgment and award. We have considered the entire material on record in the light of pronouncements of the Apex Court. Reference may be made to the case of ***"Pratap Narain Singh Deo Vs. Srinivas Sabata and another" [(1976) 1 Supreme Court Cases 289].*** In that case before the Apex Court, a carpenter fell down during the course of employment and suffered injuries in the amputation of his left arm. It has been held that ***"the injury was of such a nature as to cause permanent disablement and it incapacitated him from performing all work which he was capable of performing, viz. that of a carpenter."*** In any view of the matter, we fail to take a different view on this count. We hold that this finding of the court below does not require any interference by this Court.

Having considered the grounds taken in the memo of appeal and substantial question of law, we are of the view that the judgment and award under appeal does not suffer from any illegality or infirmity. Accordingly, the appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal is, upheld. No order as to costs.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP